

Internal Revenue Service

Number: **201113003**

Release Date: 4/1/2011

Index Number: 355.01-02, 368.04-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B06

PLR-121634-10

Date:

November 01, 2010

TY:

Legend

Distributing =

State X =

Date 1 =

Shareholder 1 =

Shareholder 2 =

Shareholder 3 =

Shareholder 4 =

Trust =

LLC 1 =

LLC 2 =

Controlled X =

Controlled Y =

Controlled Z =

Business A =

Activity A =

Activity B =

Activity C =

Location 1 =

Location 2 =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

m =

n =

o =

p =

q =

Exhibit A =

Exhibit B =

Exhibit C =

Dear _____ :

This letter is in response to a request for a letter ruling dated May 17, 2010, as supplemented by letter and other correspondence dated July 27, October 12, and November 1st, 2010, requesting rulings as to the federal income tax consequences of a series of proposed transactions. The information provided in that request and in the later correspondence is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the proposed transactions described below: (i) satisfy the business purpose requirement of Code Section 1.355-2(b) of the Income Tax Regulations; (ii) are used principally as a device for the distribution of the earnings and profits of a distributing or any controlled corporation or both (see Code Section 355(a)(1)(B) of the Internal Revenue Code and Code Section 1.355-2(d)); or (iii) are part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in a

distributing or any controlled corporation (see Code Section 355(e) and Code Section 1.355-7).

SUMMARY OF FACTS

Distributing is a State X corporation that was organized as a subchapter C corporation on Date 1. Distributing has two classes of common stock and one class of preferred stock. One class of common stock is Voting Common Stock of which there are only *a* shares outstanding. The other class of common stock is Nonvoting Common Stock of which there are *b* shares outstanding. There are *c* shares of Non-Voting Preferred Stock outstanding.

Shareholder 1 owns *d* shares of the Voting Common Stock. Shareholder 2 owns *e* shares of the Voting Common Stock. LLC 1 owns *f* shares of the Non-Voting Common Stock and *g* shares of the Non-Voting Preferred Stock. LLC 2 owns *h* shares of the Non-Voting Common Stock and *i* shares of the Non-Voting Preferred Stock. Trust owns *j* shares of the Non-Voting Common Stock and *k* shares of the Non-Voting Preferred Stock. LLC 1 and LLC 2 are both treated as partnerships for purposes of the federal income tax.

Shareholder 3 and Shareholder 4 are the children of Shareholder 1. Shareholder 1, Shareholder 3, and Shareholder 4 collectively form "Group 1." LLC 1 is owned by Shareholder 2 and her lineal descendants. Shareholder 2 and her lineal descendants collectively form "Group 2." Group 1 beneficially owns *o*% of the total value and *o*% of the total number of shares of Distributing's outstanding stock directly and/or indirectly. Group 2 beneficially owns *o*% of the total value and *o*% of the total number of shares of Distributing's outstanding stock directly and/or indirectly.

Distributing is directly engaged in Business A, which consists of Activity A and Activity B performed in Location 1 and Location 2. Distributing has submitted financial information which indicates that Business A has had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years.

Continuing disputes and disagreements among the shareholders of Group 1 and Group 2, as well as between Shareholder 3 and Shareholder 4, have adversely affected the management and operation of Business A. If permitted to continue, the disputes and disagreements would jeopardize the operation and continued success of Business A.

PROPOSED TRANSACTIONS

For what are represented to be valid business purposes, Distributing has proposed the following transactions (the "Proposed Transactions"):

- (i) The interest of the Trust in Distributing shall be distributed to Shareholder 1 pursuant to the distribution standards of the Trust. As a result, the Trust will have no interest in Distributing.
- (ii) Shareholder 1 shall contribute the interest in Distributing previously held by the Trust and the *d* shares of Voting Common Stock to LLC 2.
- (iii) Shareholder 2 shall contribute the *e* shares of the Voting Common Stock interest to LLC 1.
- (iv) Distributing shall form 3 new corporations and name them Controlled X, Controlled Y, and Controlled Z.
- (v) The assets described in Exhibit A shall be transferred by Distributing to Controlled X in exchange for all of the stock of Controlled X. Distributing shall then redeem one-half of the shares of Distributing's Voting Common, Non-Voting Common, and Non-Voting Preferred Stock held by LLC 2 in exchange for all of the outstanding stock of Controlled X.
- (vi) The assets described in Exhibit B shall be transferred by Distributing to Controlled Y in exchange for all of the stock of Controlled Y. Distributing shall then redeem the remaining one-half of the shares of Distributing's Voting Common, Non-Voting Common, and Non-Voting Preferred Stock held by LLC 2 in exchange for all of the outstanding stock of Controlled Y.
- (vii) The assets described in Exhibit C shall be transferred by Distributing to Controlled Z in exchange for all of the stock of Controlled Z. Distributing shall then redeem all of the shares of Distributing's Voting Common, Non-Voting Common, and Non-Voting Preferred Stock held by LLC 1 in exchange for all of the outstanding stock of Controlled Z.
- (viii) As a result of the transactions listed above, Distributing will have no shares of common or preferred stock issued and/or outstanding.
- (ix) Following the exchange of all Distributing's Voting Common, Non-Voting Common, and Non-Voting Preferred Stock by LLC 2 and LLC 1, LLC 2 will own all of the stock of Controlled X and Controlled Y, and LLC 1 will own all of the stock of Controlled Z.

(x) After the Distributions, Distributing will have no business activities and no assets. Distributing will be dissolved.

(xi) Immediately after the Distributions, LLC 2 shall distribute all of the shares of:

- a. Controlled X to Shareholder 3 and Shareholder 1 in exchange for all of the membership interest held by Shareholder 3 in LLC 2 and one-half of the membership interest held by Shareholder 1 in LLC 2.
- b. Controlled Y to Shareholder 4 and Shareholder 1 in exchange for all of the membership interest held by Shareholder 4 in LLC 2 and one-half of the membership interest held by Shareholder 1 in LLC 2.

(xii) After the distributions described in (xi), the interests of Controlled X and Controlled Y shall be held by the following shareholders in the following percentages:

<u>Corporation</u>	<u>Shareholder</u>	<u>Percentage</u>
Controlled X:	Shareholder 1	<i>m</i>
	Shareholder 3	<i>p</i>
Controlled Y:	Shareholder 1	<i>m</i>
	Shareholder 4	<i>p</i>

(xiii) After the Distributions, Controlled X, Controlled Y, and Controlled Z will each continue portions of the active conduct of business previously operated by Distributing, independently and with their respective separate employees. Controlled X will hire existing personnel of Distributing, and Controlled Y and Controlled Z will hire other personnel as soon as the transaction closes.

(xiv) The expenses incurred in carrying out the plan will be paid by Distributing.

REPRESENTATIONS

The taxpayer makes the following representations regarding the Proposed Transactions:

- (a) The fair market value of the stock of Controlled X and Controlled Y to be received by LLC 2 will be approximately equal to the fair market value of the Distributing stock surrendered by LLC 2 in the exchange.
- (b) The fair market value of the stock of Controlled Z to be received by LLC 1 will be approximately equal to the fair market value of the Distributing stock surrendered by LLC 1 in the exchange.

- (c) No part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, an employee, or in any capacity other than that of a shareholder of Distributing.
- (d) The five years of financial information submitted on behalf of Distributing is representative of the corporation's present operation, and with regard to Distributing, there have been no substantial operational changes since the date of the last financial statements submitted.
- (e) Distributing neither acquired Business A nor acquired control of an entity conducting Business A during the five-year period ending on the date of the Distributions in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part.
- (f) Following the Proposed Distributions, each controlled corporation will continue portions of the active conduct of the business previously operated by Distributing, independently and with its separate employees.
- (g) The Proposed Distributions will be carried out to eliminate shareholder disputes that, if permitted to continue, would jeopardize the operation and continued success of Business A. The Distributions will provide each of Shareholder 1 and Shareholder 3, Shareholder 1 and Shareholder 4, and Group 2 control over the operation of Business A to be conducted on the portion of Distributing's assets contributed to Controlled X, Controlled Y, and Controlled Z, respectively. The Distributions are motivated, in whole or in substantial part, by this corporate business purpose.
- (h) The Proposed Transactions are not used principally as a device for the distributions of earnings and profits of Distributing, Controlled X, Controlled Y, or Controlled Z.
- (i) For purposes of Code Section 355(d), immediately after the Distributions, no person (determined after applying Code Section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of any Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of any Controlled stock, that was either (i) acquired by purchase (as defined in Code Section 355(d)(5) and (8)) during the five-year period (determined after applying Code Section 355(d)(6)) ending on the date of the Distribution or (ii) attributable to distributions on Distributing stock that was acquired by purchase (as defined in Code Section 355(d)(5) and (8)) during the five-year period (determined after applying Code Section 355(d)(6)) ending on the date of the Distribution.

- (i) The Distributions are not part of a plan or series of related transactions (within the meaning of Code Section 355(e)) pursuant to which one or more persons will acquire directly or indirectly stock possessing 50 percent or more of the total combined voting power of all classes of stock of either Distributing or any Controlled, or stock possessing 50 percent or more of the total value of all classes of stock of either Distributing or any Controlled.
- (j) The total adjusted bases and the fair market value of the assets transferred to each of Controlled X, Controlled Y, and Controlled Z equal or exceed the sum of the liabilities assumed (within the meaning of Code Section 357(d)) by, and any liabilities transferred to, the respective Controlled corporation; and liabilities assumed (within the meaning of Code Section 357(d)) and liabilities secured by transferred assets were incurred in the ordinary course of business.
- (k) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Proposed Distributions.
- (l) No intercorporate debt will exist between and/or among Distributing and the Controlled corporations (Corporation X, Controlled Y, and Controlled Z) at the time of, or subsequent to, the Distributions.
- (m) Payments made in connection with all continuing transactions, if any, among Controlled X, Controlled Y, Controlled Z, and the shareholders, will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (n) No parties to the Proposed Transactions are investment companies as defined in Code Section 368(a)(2)(F)(iii) and (iv).
- (o) The total fair market value of the assets that Distributing will transfer to each of Controlled X, Controlled Y, and Controlled Z in the Contributions will exceed the sum of (i) the total liabilities (if any) assumed (within the meaning of Code Section 357(d)) by each Controlled corporation, (ii) the amount of liabilities (if any) owed to each Controlled corporation by Distributing that are discharged or extinguished in the exchange, and (iii) the amount of cash and the fair market value of the property (if any) (other than stock and securities permitted to be received under Code Section 361(a) without the recognition of gain) received by Distributing from each Controlled corporation in the exchange. The fair market value of the assets of each Controlled corporation will exceed the amount of its liabilities immediately after the Distribution.
- (p) Immediately after the Proposed Transactions (taking into account Code Section 355(g)(4)), neither Controlled X, Controlled Y, nor Controlled Z will be a disqualified investment corporation (within the meaning of Code Section 355(g)(2)).

- (q) Distributing and each Controlled corporation, and their respective shareholders, will each pay their own expenses, if any, incurred in connection with the Proposed Transactions.
- (r) None of the Distributing preferred stock transferred to Distributing in exchange for common stock of Controlled X, Controlled Y, or Controlled Z will be nonqualified preferred stock (as defined in Code Section 351(g)(2)).
- (s) None of the Distributing non-voting preferred stock to be transferred by LLC 1 to Distributing in exchange for equity stock of Controlled Z is Section 306 stock within the meaning of Code Section 306(c).
- (t) None of the Distributing non-voting preferred stock to be distributed by the Trust to Shareholder 1, which stock will then be contributed by Shareholder 1 to LLC 2 is Section 306 stock within the meaning of Code Section 306(c).
- (u) None of the Distributing preferred stock held by LLC 2, which is to be transferred by LLC 2 to Distributing in exchange for equity stock of Controlled X and Controlled Y, is Section 306 stock within the meaning of Code Section 306(c).
- (u) Shareholder 1, Shareholder 3, and Shareholder 4, being all of the members of LLC 2, have held their respective interests in LLC 2 for more than five years.
- (v) LLC 2 has held its stock interests in Distributing for more than five years.
- (w) Shareholder 1, Shareholder 3, and Shareholder 4 will not increase, and have not increased, their basis in LLC 2 at the time of, or in anticipation of, the Proposed Transactions.

RULINGS

Based solely on the information submitted and the representations made, we rule as follows regarding the Proposed Transactions:

- (a) Each Contribution, together with its respective Distribution (each Contribution and each Distribution is described in (v), (vi), and (vii) above), will be a reorganization within the meaning of Code Section 368(a)(1)(D). With respect to each such reorganization, Distributing and the respective Controlled Corporation will be "a party to a reorganization" within the meaning of Code Section 368(b).
- (b) No gain or loss will be recognized by Distributing on the Contributions (Code Sections 357(a) and 361(a)).

(c) No gain or loss will be recognized by any of the Controlled Corporations on the Contributions (Code Section 1032(a)).

(d) The basis of each asset received by each of the Controlled Corporations in the Contributions will equal the basis of that asset in the hands of Distributing immediately before the Contributions (Code Section 362(b)).

(e) The holding period of each asset received by each of the Controlled Corporations in the Contributions will include the period during which Distributing held the asset (Code Section 1223(2)).

(f) No gain or loss will be recognized by (and no amount otherwise will be included in the income of) LLC 1 and LLC 2 on their receipt solely of the stock of a respective Controlled Corporation in the Distributions (Code Section 355(a)).

(g) No gain or loss will be recognized by Distributing in connection with the Distributions (Code Section 361(c)(1)).

(h) The aggregate basis of the stock in the respective Controlled corporation received by each shareholder (i.e., LLC 1 and LLC 2) in the Distributions (i.e., Controlled X and Controlled Y received by LLC 2, and Controlled Z received by LLC 1) will each equal the aggregate basis of the Distributing stock surrendered by each Shareholder in exchange therefor, allocated in accordance with Code Section 1.358-2(a) (Code Section 358(a) and (b)(2)).

(i) The holding period of the stock in the respective Controlled Corporation received by each Shareholder (LLC 1 and LLC 2) in the Distributions will include the holding period of the Distributing stock surrendered in exchange therefor, provided the Distributing stock was held as a capital asset on the date of the Distributions (Code Section 1223(1)).

(j) The earnings and profits of Distributing, if any, will be allocated to each of the Controlled Corporations in accordance with Code Section 312(h) and Code Section 1.312-10(a).

CAVEATS

No opinion is expressed about the tax treatment of the Proposed Transactions under other provisions of the Code and regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transactions that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding:

(i) Whether the Distributions satisfy the business purpose requirement of Code Section 1.355-2(b);

(ii) Whether the Distributions are being used principally as a device for the distribution of the earnings and profits of Distributing or the Controlled Corporations;

(iii) Whether the Proposed Transactions are part of a plan (or series of related transactions) under Code Section 355(e)(2)(A)(ii);

(iv) The tax results from the transactions composing the proposed restructuring transactions as described under 1(i) through 1(iv), 1(xi) through 1(xii).

(v) The fair market value of any class of Distributing's Voting Common, Non-Voting Common, and the Preferred Non-Voting Stock.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Mary E. Goode
Senior Counsel, Branch 6
(Corporate)